

STATE OF MONTANA STANDARD LEASE CONTRACT 2004

1. PARTIES

This lease (#6450) is entered into this 19th day of February 2004 by the Montana Department of Corrections located at 1539 11th Avenue, Helena, MT 59620-1301 (hereinafter referred to as "Department") and **DIY Rentals, Inc.** (FEI# 81-047-9393) located at PO Box 1049, Sidney, MT 59270 (hereinafter referred to as "Contractor").

2. PURPOSE OF LEASE

Department has a need to lease premises in Sidney, Montana for the purpose of Probation and Parole office space and Contractor has premises available for lease in Sidney, Montana suitable for stated purpose. Contractor and Department therefore agree as follows:

3. PREMISES DESCRIPTION

The area of space being leased consists of 780 square feet and includes the right to use common areas within the leased premise. The premises are located at 107 2nd Street SW in Sidney, Montana.

4. TERM OF LEASE

The term of this lease shall be five (5) years, originating on April 1, 2004 and terminating on the March 31, 2009, unless earlier terminated as provided in Sections 14, 20 or 22 of this lease.

5. CONSIDERATION

The annual amount of rent Department shall pay to Contractor during the first year is **\$6,600.00**. This reflects a rate of \$8.46 per square foot the first year. **This rate shall increase by 3% annually, beginning April 1, 2005.**

<u>Year Beginning</u>	<u>Annual Rate</u>	<u>Per Sq ft</u>
April 1, 2004	\$6,600.00	\$8.46
April 1, 2005	\$6,798.00	\$8.72
April 1, 2006	\$7,001.94	\$8.98
April 1, 2007	\$7,212.00	\$9.25
April 1, 2008	\$7,428.36	\$9.52

Department shall make **annual** lease payments without the need for a separate invoice from Contractor. Lease payments are due on the first business day of April. Contractor may, by written election, request that payments be made by electronic funds transfer. Such an election shall remain in force until cancelled by Contractor with 30 day's advance written notice to Department.

6. RENEWAL OPTION

N/A

7. UTILITIES AND SERVICES

Contractor shall furnish and pay for all utilities (i.e., gas, electricity, water, and sewer) and trash removal. Janitorial

services shall be provided by Contractor as described in Attachment "A", made a part of this lease by reference.

8. PARKING SPACE

No parking is included or provided as part of this lease. Parking is available off-street or on the city lot.

9. PARKING AREA AND SIDEWALK MAINTENANCE

CONTRACTOR agrees to keep sidewalks in good repair and to remove snow, ice, sand, gravel, and debris from the sidewalks in a timely fashion.

10. NOTICE PROTOCOL

Any notice or demand required under this lease must be in writing, addressed to the liaison listed herein. Written notice shall be deemed given when hand delivered, or when mailed by first class mail, postage prepaid, to the addresses specified in this section.

CONTRACTOR'S liaison for purpose of receiving demand or notice is **Terry Averett**, PO Box 1049, Sidney MT 59270. Telephone # 406-433-5464.

DEPARTMENT'S liaison for purpose of receiving demand or notice is **Loreen Barnaby**, 606 N Merrill, Glendive MT 59330. Telephone # 406-377-4086.

If either party changes its liaison or address, it must notify the other party, in writing, at the address provided herein.

11. QUIET ENJOYMENT

Upon payment of scheduled lease amounts and compliance with the conditions set forth herein, DEPARTMENT has the right to quiet and peaceful enjoyment and utilization of the leased premises throughout the term of this lease.

12. INSPECTION

DEPARTMENT shall permit CONTRACTOR or its agent, upon prior written notice, to enter into and/or upon the premises at all reasonable times to maintain or inspect the leased premises or to make repairs, alterations, or additions to any portion of the building.

13. MAINTENANCE OF PREMISES

CONTRACTOR shall, at its own cost and expense, keep and maintain in good working order and repair during the term of this lease or any extension thereof, the exterior of the premises including the roof, the interior, all fixtures in the building except those owned by DEPARTMENT, and all plumbing, heating, ventilation, air conditioning, and electrical circuits. CONTRACTOR, at its own cost and expense shall be responsible for the replacement of light bulbs, fluorescent tubes and other lighting elements and shall do so within 7 working days after notification.

DEPARTMENT shall immediately notify CONTRACTOR, in writing, of any damage or need for repair. CONTRACTOR shall make, or cause to be made, the necessary repairs as soon as possible after receiving notice. DEPARTMENT shall be financially responsible only in cases of damages resulting from DEPARTMENTS' negligence or that of its employees.

Should CONTRACTOR fail to begin to make necessary repairs within thirty (30) days after notification of damages, DEPARTMENT may then make necessary repairs at the lowest reasonable expense to CONTRACTOR.

An itemized statement of repairs made by DEPARTMENT under this section, including receipt verification of labor and materials may be tendered in lieu of full or partial payment of rent due for the succeeding months until the cost of the work performed is fully credited against rent due under this lease.

14. CASUALTY OR FIRE DAMAGE

In the event the leased premises becomes twenty-five percent (25%) or more destroyed or made uninhabitable by fire or other casualty, or if the premises are condemned by a proper authority, this lease may be terminated by Department.

If the premises are less than twenty-five percent (25%) destroyed or made uninhabitable by fire or other casualty, the rent shall be reduced by the proportion the premises have been rendered uninhabitable or declared unsafe. For the purpose of this section other casualty includes, but is not limited to, vandalism.

If the premises are not restored, or cannot be restored, and returned to proper condition for use and occupancy within thirty (30) days of the casualty, then either Contractor or Department may terminate this lease on ten (10) days written notice to the other party.

Upon written notice of termination under this section, Contractor shall refund any unearned rent paid by Department, and Department shall have no further obligation to Contractor under this lease. Contractor shall continue to insure the premises until Departments' personal property is removed from the premises. Department shall have 30 days after termination of this lease to remove its property from the premises.

15. ALTERATIONS TO PREMISES

Department agrees to make no substantial alteration to the premises without prior written consent of Contractor.

16. SIGNS

Contractor shall, at reasonable expense to Department, install a suitable sign or signs to advertise Department's presence in and on the premises. Said sign(s) shall be installed on the exterior of the premises.

17. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

Contractor agrees to protect, defend, and save Department, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns and subcontractors, under this lease.

Contractor shall not be responsible for the negligence of Department.

18. INSURANCE SPECIFICATIONS

a. Property

At its sole cost and expense, Contractor shall keep the building and all other improvements on the premises insured throughout the term of the agreement against the following hazards:

- Loss or damage by fire and such other risks (not including earthquake damage) in an amount sufficient to permit such insurance to be written at all times on a replacement costs basis. This may be insured against by attachment of standard form extended coverage endorsement to fire insurance policies.
- Loss or damage from leakage of sprinkler systems now or hereafter installed in any building on the premises.
- Loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks, or similar apparatus now or hereafter installed in a building or buildings on the premises.

b. General Liability

- General Liability: Contractor shall purchase Occurrence coverage with combined single limits of \$1 million per occurrence/\$2 million aggregate per year for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit. This insurance must be from an insurer licensed to do business in Montana or a domiciliary state and with a Bests rating of no less than A-. Contractor must provide 30 days written notice to Department of any material change in coverage including cancellation and that Department reserves the right to request copies of Contractors insurance coverage at any time.

Contractors' insurance coverage shall be primary insurance as respects Department, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by Department, its officers, officials, employees, or volunteers shall be excess of Contractors' insurance and shall not contribute with it.

19. COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

CONTRACTOR must comply with all applicable state and federal law. This includes, but is not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age discrimination Act of 1975, the Americans with Disabilities Act of 1990, PL 101-336, and Section 504 of Rehabilitation Act of 1973.

CONTRACTOR agrees to comply with all rules and regulations adopted under the Montana Safety Act and the Act itself. CONTRACTOR further agrees to comply with the ordinances and laws of the City of Polson and the State of Montana, affecting the use of the premises and to assume all legal responsibility for any charges or damages for non-observance.

CONTRACTOR agrees to provide DEPARTMENT of Administration, the Legislative Auditor, the Legislative Fiscal Analyst, or their authorized agents access to any records concerning this lease.

CONTRACTOR agrees to create and retain all records supporting the services rendered or goods delivered for a period of three years after either the completion date of this lease or the conclusion of any claim, litigation or

exception relating to this lease taken by the state of Montana or a third party.

CONTRACTOR warrants that the leased premises are ADA accessible and compliant.

20. ENVIRONMENTAL HAZARDS

Contractor hereby represents and warrants that no leak, spill, release, discharge, emission or disposal of hazardous or toxic substances has occurred on the leased premises to date and that the soil and groundwater on or under the leased premises are free of toxic or hazardous substances as of the date that the term of this lease commences.

Contractor represents and warrants that the leased space shall be free of all asbestos containing materials, except undamaged vinyl asbestos floor tile in the space or undamaged boiler or pipe insulation outside the space. Radon levels in the demised premises shall not equal or exceed the Environmental Protection Agency (EPA) action level for homes or 4 pico curies per liter (PCI/L).

If, at any time, Department determines that the demised premises pose a significant environmental hazard to its employees, this lease may be immediately terminated.

21. HOLDOVER TENANCY

In the event DEPARTMENT holds the premises beyond the terms of this lease, in the absence of a written agreement to the contrary, it shall be deemed a month-to-month tenancy subject to all terms and conditions of this lease. This holdover tenancy may be terminated at any time by either party upon 30-day written notice prior to the beginning of the final month of occupancy.

22. TERMINATION

CONTRACTOR acknowledges, understands, and agrees that DEPARTMENT, as a state agency, is dependent upon state and federal appropriations for its funding. In the event state or federal government funds available for this purpose are reduced, DEPARTMENT may cancel this lease by giving thirty (30) days written notice to CONTRACTOR.

DEPARTMENT shall not be liable to CONTRACTOR for any amount which would have been payable had the lease not been terminated under this provision. DEPARTMENT shall be liable to CONTRACTOR only for the amount owed to CONTRACTOR up to the date DEPARTMENT vacates the premises.

If either party to this lease defaults in the performance of any term or condition of this lease, the other party may give the defaulting party notice of the default, which notice shall specify the action required to correct the default and a period of time of not less than (30) days within which to correct the default. If the default is not corrected within the time specified in the notice, the party not in default may terminate this lease without further obligation under this lease, other than obligations incurred or accrued to the date of termination.

At the expiration or termination of this lease or any extension of it, DEPARTMENT will vacate and surrender the premises to CONTRACTOR in as good condition and repair as when it took possession, reasonable wear and tear excepted. All property and fixtures placed in or upon the premises by DEPARTMENT, or owned by the State of Montana, may be removed by DEPARTMENT within thirty days of termination.

23. SEVERABILITY

It is understood and agreed by the parties hereto that if any term or provision of this lease is held to be illegal, void or in conflict with any Montana law, the validity of the remaining terms and conditions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if this lease did not contain the particular term, condition, or provision held to be invalid.

24. VENUE AND INTERPRETATION

Contractor and Department agree that this lease shall be governed and interpreted according to the laws of the State of Montana. In the event of a dispute arising over this lease, the proper venue for the hearing of the case is the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark.

25. SUCCESSORS

All rights and liabilities herein given to or imposed upon both parties shall extend to, be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

26. LEASE APPROVAL

This entire lease, in addition to any change, alteration, or renewal thereof, addendum, amendment, or letter of understanding, is subject to prior approval by Department of Administration.

27. ENTIRE LEASE

This Lease consists of Sections 1-29 and contains the entire agreement between CONTRACTOR and DEPARTMENT. Any agreement to modify this lease shall not be effective unless such agreement is in writing and is signed by all parties to the lease.

28. SUBLEASE

Department shall have the right to sublet the premises to a sublessee, with the consent of Contractor, which consent shall not be unreasonably withheld.

29. SMOKE FREE ENVIRONMENT

Contractor shall make the portions of the building occupied by state agencies smoke-free. "Smoke" means smoke from a lighted cigar, cigarette, or pipe or any other lighted tobacco product as defined in MCA 50-40-202.

IN WITNESS THEREOF, Contractor and Department have entered into and executed this lease.

CONTRACTOR

By: Terry B Averett
Terry Averett, Owner
DYI Rentals Inc.

Date 3/8/04

DEPARTMENT

By: Mike Ferriter
Mike Ferriter, Administrator
Department of Corrections
Adult Community Correction Division

Date 3-3-04

APPROVAL BY DEPARTMENT OF ADMINISTRATION

By: Garett M. Bacon
Garett M. Bacon, Leasing Officer
General Services Division

Date 2-19-2004

THIS LEASE HAS BEEN APPROVED FOR LEGAL CONTENT BY DEPARTMENT OF ADMINISTRATION'S LEGAL COUNSEL.

ATTACHMENT "A"
JANITORIAL SPECIFICATIONS

All janitorial equipment, work and supplies necessary to accomplish the duties described will be furnished by Contractor.

1. The janitorial supply list includes but is not limited to:
 - a. Hand towels and toilet tissue;
 - b. Restroom hand soap for dispensers;
 - c. Trash can liners; and
 - d. Entrance or walk-off mats.

2. Daily Requirements:
 - a. Floor sweeping and damp mopping all tiled areas.
 - b. Clean and sanitize plumbing fixtures, and toilet rooms (sinks, showers, toilets, mirrors, etc.)
 - c. Vacuum carpet, using industrial type vacuum cleaner with a power head in entrance area and hallways.
 - d. Remove all trash from building.
 - e. Cleaning supplies: re-stock toilet tissue, towels, soap, etc. in restrooms.

3. Weekly Requirements:
 - a. Complete dusting of all offices.
 - b. Vacuum all areas of carpeting.
 - c. Clean interior glass by each doorway.

4. Semi-annual Requirements:
 - a. Glass Cleaning - all external windows leased by Department (October and May).
 - b. Carpet Cleaning - all carpeted areas in space leased by Department shall be cleaned using professional process carpet cleaning equipment.
 - c. Clean all light fixtures.